IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 18370 of 2007(J)

PETITIONER:

1. PRADEEP KUMAR, S/O.DIVAKARAN NAIR,
   AGED 43, GAYATHRI BHAVAN, THIRUVALLAM VILLAGE,
   TRIVANDRUM.

2. GAYATHRI, D/O.LAILA, AGED 34,
   RESIDING AT -DO-

BY ADV. SRI.V.S.BABU GIREESAN

RESPONDENTS:

1. THE STATE OF KERALA,
   REPRESENTED BY THE SECRETARY TO GOVERNMENT
   REVENUE DEPARTMENT, SECRETARIAT,
   TRIVANDRUM.

2. DISTRICT COLLECTOR,
   COLLECTORATE, TRIVANDRUM.

3. THE ADDITIONAL TAHASILDAR,
   THIRUVANANTHAPURAM.

4. T.P.RAJASEKHARAN NAIR,
   S/O.PARAMESWARAN NAIR, SIVAVILASAM,
   THIRUVALLAM, THIRUVANANTHAPURAM.

5. T.P.RAMACHANDRAN NAIR,
   S/O.PARAMESWARAN NAIR,
   SIVAVILASAM, THIRUVALLAM.

6. T.P.VASANTHA BHAI AMMA,
   D/O.PARVATHI AMMA, RESIDING AT
   -DO-

7. T.P.RAJENDRAN NAIR,
   S/O.PARAMESWARAN NAIR, SIVAVILASAM,
   THIRUVALLAM, THIRUVANANTHAPURAM.

8. T.P.GOPINATHAN NAIR,
   S/O.PARAMESWARAN NAIR,
   SIVAVALASAM, THIRUVALLAM,
   THIRUVANANTHAPURAM.

G.P. SHRI.I.V.PRAMOD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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W.P.(C).No.18370 of 2007

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Dated this the 15th day of June, 2007

J U D G M E N T

The petitioners challenge Ext.P11 order by which the petitioners' representation has been disposed of as directed in Ext.P8 judgment. The petitioners claim to be the mortgagees in possession of the property in question. According to them, since the mortgagor has not redeemed the mortgage and 30 years have already elapsed, they have become the absolute owner of the property and therefore, they have applied for mutation in their name which was originally granted as per Ext.P4. When the same was not implemented the petitioners approached the authorities and later this court in a writ petition, in which the respondents submitted that Ext.P4 has been subsequently cancelled. Therefore, this court directed the 2nd respondent to give the petitioners a copy of the cancellation

order. However, the same was not furnished to the petitioners. The petitioners again approached this court by filing W.P(C).No. 24471/2006 and that writ petition was closed observing that if the 2nd respondent has not complied with the earlier direction, the remedy of the petitioner is not to file another writ petition. Now the petitioners' representation in this regard has again been rejected by Ext.P11 order. The petitioners challenge Ext.P11 order.

2. Petitioners' contention is that by virtue of the mortgage having not been redeemed by the mortgagor, the petitioners have become the absolute owners of the property and therefore the respondents cannot now reject the claim of the petitioners for mutation of the property in their names.

3. I have heard the learned counsel for the petitioners as also the learned Government Pleader.

4. As is stated in Clause 16 of the Transfer of Property Rules, mutation is for physical

purposes only and the question of title regarding the property has to be decided by a civil court on the basis of which appropriate changes have to be made in the Revenue Records. The petitioners do not have any title deed. All what they have is only a mortgage deed. The question as to whether the petitioner has become absolute owner of the property based on the mortgage deed is a pure question of fact. The petitioners have to get their title declared in accordance with law in a suit in which the mortgagor is also a party. In so far as the respondents have no power to decide the question of title of the petitioners in respect of the property, I do not think that the petitioners can enforce their claim for mutation of the properties in his name unless and until a competent court declares the petitioners' title to the property. Therefore, without prejudice to the right of the petitioners to get their claim adjudicated by an appropriate Civil Court and thereafter to seek mutation of the properties in accordance with

such decree of the civil court, this writ petition is dismissed. However, there would be a direction to the 2nd respondent to issue a copy of the order stated to have been passed by him cancelling Ext.P4, within one week from the date of receipt of a copy of this judgment. I remind the 2nd respondent that in spite of a specific direction from this court, the order of cancellation has not been issued to the petitioners which would prima facie amount to contempt of court. Therefore it is in the interest of himself that the 2nd respondent complies with the direction to give a copy of the said order.

sdk+ S.SIRI JAGAN, JUDGE